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No. 71-1429

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

PARTICULAR CLEANERS, INC. and FRANCES ENTWISTLE,

Petitioners,

vs.

COMMONWEALTH EDISON COMPANY,

Respondent.

REPLY BRIEF OF PETITIONERS IN SUPPORT OF THEIR PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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REPLY BRIEF

There are three arguments first raised in Respondent's Opposition Brief which Petitioner submits are clearly inaccurate.

First, Respondent claims, on page 4 of its brief, that "The decision of the Seventh Circuit follows the decisions of other federal courts on the issue of state action in civil rights claims against public utilities." The only civil rights case in another federal circuit, cited by Respondent and involving a utility, is *Martin* v. *Pacific Northwest Bell Telephone Co.*, 441 F.2d 1116 (9 Cir., 1971). In *Martin* the

Court of Appeals held that the state was not involved with the plaintiff's charge that he was unjustly fired from his job with the utility. In very sharp contrast, in the case at bar Respondent's discrimination, essentially on the basis of wealth, in the collection of security deposits is under color of a state ordinance (ICC General Order 172).

Second, Respondent's attempt to distinguish the present case from *Washington Gas Light Co.* v. *Virginia Electric and Power Co.*, 438 F.2d 248 (4 Cir., 1971) and *Gas Light Co. of Columbus* v. *Georgia Power Co.*, 440 F.2d 1135 (5 Cir., 1971) must fail. Respondent's statement on page 5 of its brief that "These cases presented far more significant state regulatory involvement in the complained of activities than does the case at bar" is incorrect. In fact, both in *Gas Light Co. of Columbus* and *Washington Gas Light* the promotional practices were pursuant to directives issued by the utilities themselves and were *not* pursuant to a general order of the state Commission as is the case here. Further, in *Washington Gas Light*, the promotional practices complained of were never expressly approved by the state regulatory authority. Obviously the state regulatory involvement in the present case is far more significant than in *Gas Light Co. of Columbus* or in *Washington Gas Light* because of the fact that the complained of practices here are directly under color of Illinois Commerce Commission General Order No. 172.

Third, Respondent's argument on page 6 of its brief, that the Complaint failed to allege any improper or invidious discrimination, is also in error. The Complaint specifically alleges that Respondent's actions in requiring security deposits from purchasers and prospective purchasers placed these purchasers at an economic disadvantage, thereby damaging them to the extent of the amount

required (App. pp. A. 19-20). So long as some persons are at any time arbitrarily and discriminatorily placed at an economic disadvantage with respect to others under color of an Illinois Commerce Commission regulation, there is a violation of basic civil rights. Those who are required to pay a security deposit are generally those who can least afford to. Respondent's discrimination, which is essentially on the basis of wealth, denies equal protection of the laws in violation of the Civil Rights Act. Cf. *Rodriquez* v. *San Antonio Independent School District*, 337 F. Supp. 280 (D.C.W.D. Tex., 1972) *probable jurisdiction noted by this Court* June 7, 1972, No. 71-1332.

For the reasons stated in the Petition, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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